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C O N F I D E N T I A L SAN SALVADOR 001228

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SUBJECT: EL SALVADOR'S NEW SUPREME COURT JUSTICES

Classified By: DCM Michael Butler. Reasons 1.4 (b,d).

11. (U) Summary: As one of their final acts before conclusion of the Legislative Assembly session, the 2003-2006 Assembly on April 30 elected five new members to the Supreme Court (CSJ). The new justices appear ready to confront the problems of the judicial system and undertake needed reforms.

The vote was held during the 2003-2006 legislative session because of fears that the 2006-2009 Legislative Assembly would not be able to achieve consensus sufficient to elect the justices or would have to give the FMLN two slots on the court. Failure to elect the justices in 2006 would have caused a constitutional dilemma as the terms of the CSJ justices elected in 1997 expired. The Farabundo Marti National Liberation Front (FMLN) opposed all candidates elected, and abstained from the vote. All five of the justices elected possess substantial legal credentials, have honest reputations, and were elected by consensus among all political parties save the FMLN. End Summary.

12. (U) Background: The Salvadoran Constitution requires that one third of the CSJ be elected every three years, and that each justice serve for nine years. In accordance with Salvadoran law, there are now 15 CSJ justices, divided between four chambers. Three justices each serve in the Criminal and Civil chambers, four in the Administrative chamber, and five in the Constitutional chamber. Cases decided in the Criminal, Civil, and Administrative chambers may be appealed to the Constitutional chamber. Of the five justices leaving the CSJ, two served in the Criminal chamber, two in the Administrative chamber, and one in the Constitutional chamber. All candidates for the CSJ must have a minimum of six years as an appellate judge or nine years as a regular judge, and be native-born Salvadorans. Two lists of 15 potential candidates are presented to the National Assembly, one by the lawyers' guilds of El Salvador, the other by the National Judicial Council (CNJ). The Legislative Assembly then elects five of these thirty candidates, and another five are elected as substitutes. A qualified majority of 56 votes is required to elect the justices.

13. (U) Three of the five newly-elected justices were proposed by ARENA (Fortin, Nunez, Claros), one (Trejo) by the Revolutionary Democratic Front (FDR), and one (Valdivieso) by the National Conciliation Party (PCN). The vote tally was 57 votes in favor, 28 abstaining (the FMLN). The five candidates all have significant experience and bring a depth of legal knowledge to their positions. This is a turnaround from the 2003 CSJ elections, when candidates were chosen strictly on the basis of political credentials. The qualifications of those elected at that time were highly questioned. Leading daily "La Prensa Grafica" quotes newly-elected Justice Mario Francisco Valdivieso as stating that "some of the current justices simply sign decisions for political or economic reasons" rather than basing them on jurisprudence. Five substitute justices were also elected,

all of which were endorsed by the FMLN. Substitute justices have no responsibilities, but will replace sitting justices if they become permanently incapable of fulfilling their responsibilities.

14. (U) Candidate Biographies:

Rosa Maria Fortin Huezo has practiced law since 1993 and currently serves as an Appellate Court Judge. During the bar association's CSJ candidate nomination election, she received the highest number of votes. She received her law degree from Jose Matias Delgado University in El Salvador. Fortin has received additional training as a Peace Judge in Baton Rouge, Louisiana, and in Constitutional Law in Spain. She supports judicial reforms, particularly strengthening the independence of the judiciary and the development of forensic capabilities. Fortin Huezo has the support of El Salvador's prestigious think-tank, the Salvadoran Foundation for Economic and Social Development (FUSADES).

Evelyn Roxana Nunez Franco has served eleven years as Third Family Court Judge. She received the second-highest number of votes (after Fortin) from her fellow lawyers in the bar selection process. Nunez has been an important contact of the Embassy on the issue of child abduction and attended the Latin American Judicial Seminar on the Hague Convention in Monterrey, Mexico in December 2004. After the Seminar, she assisted the Embassy in organizing a local seminar on the Hague Convention. Nunez is publicly outspoken on the subject of spousal and child abuse. She is a graduate of the University of El Salvador, and continues to teach law classes at that university. Nunez has been instrumental in advocating the use of DNA testing in family court cases in El Salvador. She has also received the support of FUSADES Center for Judicial Studies.

Dolores (Lolly) Claros de Ayala currently is the President of the Superior Council of Public Health. Her husband is Vice Minister of the Economy, Eduardo Ayala Grimaldi. Claros supports reducing the time needed to process CSJ cases from more than three years to just a few months. Claros has served as a Justice of the Peace, criminal judge, civil judge and patent attorney. She is known as a very hard-working, competent judge.

Miguel Alberto Trejo Escobar is currently a Juvenile Appellate Court Judge in San Salvador and also teaches law at the Technological University of El Salvador. He has written eight books on criminal law and supports strict interpretation of the Salvadoran Constitution. Trejo is considered to be one of the foremost experts on Salvadoran Penal law. Trejo did not generate much discussion during the Salvadoran bar's campaign for the candidates, but has a good reputation.

Mario Francisco Valdivieso specializes in civil law, and serves as the lawyer for Central Reserve Bank. He is the author of several books on civil law. He has worked as a law professor at Jose Matias Delgado University. His reputation there is that he is opinionated, but lacks communication skills. He is the "dark horse" among the new magistrates, and little is known about him other than that he has been a good advocate for his clients.

15. Comment: (C) Agustin Garcia Calderon was re-elected President of the Supreme Court for a record third consecutive term. Garcia Calderon has met with Ambassador and Polcouns on several occasions and has expressed his desire to reform the judiciary in this, his last three year term. The election of the new, reform-minded justices will facilitate the work of the court and will hopefully enable Garcia Calderon to enact much-needed reforms.
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